

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF:

CASE NO. 03-25



VS.

HENDERSON COUNTY SCHOOL SYSTEM

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

James Stephen King
Administrative Law Judge
1661 International Place Drive, #300
Memphis, TN 38120
(901) 767-1234

June 13, 2003

OFFICE OF LEGAL SERVICES

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**DIVISION OF
SPECIAL EDUCATION**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

NO. 03-25

This cause came to be heard on June 9, 2003 based upon the agreed facts, statements of counsel, statements of the Parent, and entire record in this cause the Administrative Law Judge finds as follows:

FACTS

The Student is enrolled in the 10th grade in the Henderson County School System. The Student is eligible for special education services with a learning disability in reading and math. The Student was transported to and from school on a regular school bus with non-handicapped students.

The Student has been assigned to the alternative school due to his pulling a fire alarm at school and then lying about the incident when confronted. The School System conducted a manifestation hearing and determined that the Student's behavior was not related to the Student's disability.

The School System does not provide transportation to the alternative school. The grandparent cannot provide transportation for the Student to attend the alternative school because she has no automobile and lives 15 miles from the school. The grandparent asserts the School System should have a back-up plan for a person in her situation who cannot provide transportation to an alternative school.

ISSUE

Is the School System required to provide the Student with transportation to the alternative school when it does not provide transportation to non-handicapped students?

CONCLUSIONS OF LAW

The State of Tennessee does not require that school systems provide all students with transportation to and from school. Tennessee statute provides “Boards of Education *may* provide school transportation facilities for children who live more than one and one-half miles of the nearest accessible route from the school to which they are assigned by the Board of Education in which they are enrolled.” T.C.A. §49-6-2101(a), *emphasis added*

Federal law requires that a public agency must provide transportation to disabled students in two situations. First, if a public agency provides transportation to the general student population to and from school, the public agency is responsible for providing transportation for disabled students, including providing transportation for a disabled student to any special education program in which it has placed the student. Second, if a public agency does not provide transportation to the general student population, the issue of transportation for the student with disabilities must be decided on a case-by-case basis. If a public agency determines that a disabled student needs transportation to benefit from special education, it must be provided as a related service at no cost to the student and his or her parents. Letter to Smith, 23 IDELR 344 (OSEP 1995).

In the case at hand it is undisputed that the School System does not provide the general student population transportation to and from the alternative school. Since the general student population does not receive transportation to the alternative school, Student would only be eligible for transportation if transportation is a related service.

If the Student is entitled to transportation to the alternative school, the Student must be eligible to receive such transportation as a “related service” pursuant to the Individuals with Disabilities Education Act (“IDEA”), and its implementing regulations. Under IDEA the term

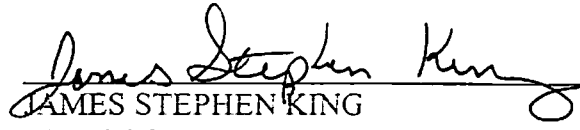
“related service” includes transportation, and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit for special education. 20 U.S.C. §1401(22) and 34 CFR §300.24(a). Transportation would include transportation to and from school and between schools; travel in and around school buildings; and required specialized equipment (such as special or adaptive buses, lifts and ramps) if required to provide special transportation for a child with disabilities. 34 CFR §300.24(b)(15). The State of Tennessee has also enacted regulations concerning the transportation of students with disabilities. Rule 0520-1-.9.08(9) of the Tennessee Department of Education Rules provides “local school systems shall provide eligible children with special transportation, where necessary.”

In case of McNair v Oak Hills Local School District, 872 F.2d 153 (6th Cir.), the Sixth Circuit Court of Appeals held transportation is a related service if it meets four requirements: (1) the child is handicapped; (2) the transportation is a related service; (3) the related service is designed to meet the unique needs of the child caused by the handicap; and (4) school district must be responsible under IDEA and its regulations for providing related services under the particular circumstances of the case at hand. Here, the Student is handicapped but transportation is not required to meet any unique needs of the Student caused by the handicap. After the Student was assigned to the alternative school, the School System held a manifestation hearing and determined that the Student’s handicap did not cause the behavior. Since the Student’s handicap does not create a need for any special transportation, the Student can utilize the same transportation services as non-handicapped children. The statute specifically requires a relationship between the related service and the unique needs of the Student, here there is no relationship between the handicapping condition and the requested service, therefore, the School System is not required to provide transportation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the School System is not required to provide transportation to the Student while the Student is attending the alternative school. This Order shall not prohibit IEP team from subsequently determining that special transportation should be part of the Student's IEP.

The School System is the prevailing party.

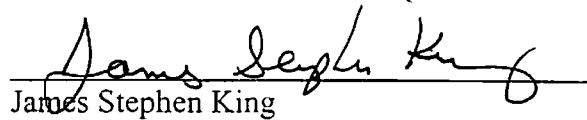
All other matters are reserved.


JAMES STEPHEN KING
ADMINISTRATIVE LAW JUDGE

DATED: June 13, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document has been sent by postage prepaid mail, this the 13th day of June, 2003 to the school system and the Child.


James Stephen King